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shall be advised and informed of the appropriate Privacy and FOIA exemption. Appeals shall be processed under both Acts.

(v) Requesters who seek records about themselves that are not contained in a Privacy Act system of records, and who cite or imply the Privacy Act and FOIA, will have their requests processed under the FOIA (32 CFR part 286), because the access provisions of this part do not apply. Appeals shall be processed under the FOIA.

(2) Do not deny individuals' access to personal information concerning themselves that would otherwise be releasable to them under either Act solely because they fail to cite or imply either Act or cite the wrong Act or part.

(3) Explain to the requester which Act(s) was(were) used when granting or denying access under either Act.

(j) *Time limits.* DoD Components normally shall acknowledge requests for access within 10 working days after receipt and provide access within 30 working days.

(k) *Privacy case file.* Establish a Privacy Act case file when required. (See paragraph (p) of § 310.19.)

§ 310.18 Denial of individual access.

(a) *Denying individual access.* (1) An individual may be denied access to a record pertaining to him or her only if the record:

(i) Was compiled in reasonable anticipation of a civil action or proceeding (see § 310.27).

(ii) Is in a system of records that has been exempted from the access provisions of this part under one of the permitted exemptions. (See § 310.28 and § 310.29.)

(iii) Contains classified information that has been exempted from the access provision of this part under the blanket exemption for such material claimed for all DoD records systems. (See § 310.26(c).)

(iv) Is contained in a system of records for which access may be denied under some other Federal statute that excludes the record from coverage of the Privacy Act (5 U.S.C. 552a).

(2) Where a basis for denial exists, do not deny the record, or portions of the

record, if denial does not serve a legitimate governmental purpose.

(b) *Other reasons to refuse access:*

(1) An individual may be refused access if:

(i) The record is not described well enough to enable it to be located with a reasonable amount of effort on the part of an employee familiar with the file; or

(ii) Access is sought by an individual who fails or refuses to comply with the established procedural requirements, including refusing to name a physician to receive medical records when required (see paragraph (f) of § 310.17) or to pay fees (see § 310.20).

(2) Always explain to the individual the specific reason access has been refused and how he or she may obtain access.

(c) *Notifying the individual.* Formal denials of access must be in writing and include as a minimum:

(1) The name, title or position, and signature of a designated Component denial authority.

(2) The date of the denial.

(3) The specific reason for the denial, including specific citation to the appropriate sections of the Privacy Act (5 U.S.C. 552a) or other statutes, this part, DoD Component instructions, or CFR authorizing the denial;

(4) Notice to the individual of his or her right to appeal the denial through the Component appeal procedure within 60 calendar days; and

(5) The title or position and address of the Privacy Act appeals official for the Component.

(d) *DoD Component appeal procedures.* Establish internal appeal procedures that, as a minimum, provide for:

(1) Review by the Head of the Component or his or her designee of any appeal by an individual from a denial of access to Component records.

(2) Formal written notification to the individual by the appeal authority that shall:

(i) If the denial is sustained totally or in part, include as a minimum:

(A) The exact reason for denying the appeal to include specific citation to the provisions of the Act or other statute, this part, Component instructions or the CFR upon which the determination is based;

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(B) The date of the appeal determination;

(C) The name, title, and signature of the appeal authority; and

(D) A statement informing the applicant of his or her right to seek judicial relief.

(ii) If the appeal is granted, notify the individual and provide access to the material to which access has been granted.

(3) The written appeal notification granting or denying access is the final Component action as regards access.

(4) The individual shall file any appeal from denial of access within no less than 60 calendar days of receipt of the denial notification.

(5) Process all appeals within 30 days of receipt unless the appeal authority determines that a fair and equitable review cannot be made within that period. Notify the applicant in writing if additional time is required for the appellate review. The notification must include the reasons for the delay and state when the individual may expect an answer to the appeal.

(e) *Denial of appeals by failure to act.* A requester may consider his or her appeal formally denied if the appeal authority fails:

(1) To act on the appeal within 30 days;

(2) To provide the requester with a notice of extension within 30 days; or

(3) To act within the time limits established in the Component's notice of extension (see paragraph (d)(5) of this section).

(f) *Denying access to OPM records held by the DoD Components.* (1) The records in all systems of records maintained in accordance with the OPM Government-wide system notices are technically only in the temporary custody of the Department of Defense.

(2) All requests for access to these records must be processed in accordance with 5 CFR part 297 as well as applicable Component procedures.

(3) When a DoD Component refuses to grant access to a record in an OPM system, the Component shall advise the individual that his or her appeal must be directed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E

Street, NW., Washington, DC, in accordance with the procedures of 5 CFR part 297.

§ 310.19 Amendment of records.

(a) *Individual review and correction.* Individuals are encouraged to review the personal information being maintained about them by the DoD Components periodically and to avail themselves of the procedures established by this part and other Regulations to update their records.

(b) *Amending records.* (1) An individual may request the amendment of any record contained in a system of records pertaining to him or her unless the system of records has been exempted specifically from the amendment procedures of this part under paragraph (b) of § 310.26. Normally, amendments under this part are limited to correcting factual matters and not matters of official judgment, such as performance ratings, promotion potential, and job performance appraisals.

(2) While a Component may require that the request for amendment be in writing, this requirement shall not be used to discourage individuals from requesting valid amendments or to burden needlessly the amendment process.

(3) A request for amendment must include:

(i) A description of the item or items to be amended;

(ii) The specific reason for the amendment;

(iii) The type of amendment action sought (deletion, correction, or addition); and

(iv) Copies of available documentary evidence supporting the request.

(c) *Burden of proof.* The applicant must support adequately his or her claim.

(d) *Identification of requesters.* (1) Individuals may be required to provide identification to ensure that they are indeed seeking to amend a record pertaining to themselves and not, inadvertently or intentionally, the record of others.

(2) The identification procedures shall not be used to discourage legitimate requests or to burden needlessly or delay the amendment process. (See paragraph (c) of § 310.17.)